APPENDIX A

Petitioners' Answer to Complaint and Rule to Show Cause.

ANSWER TO COMPLAINT AND REPLY TO RULE TO SHOW CAUSE

As a first further answer and defense and in bar of any claim or claims of the Plaintiff, the Defendants allege and say:

2. In the manufacturing process, an agent or employee of the defendant, Custom Recording Company, Inc., purchases phonograph records on the open market for a commercial establishment selling such phonograph records in commerce for use within this state, such phonograph records having musical performances embodied thereon. Upon purchase of the phonograph records, defendant, Custom Recording Company, Inc., through its employees, arranges for the copying of a selected musical performance or performances contained or embodied in said phonograph records onto a magnetic tape known as an intermaster. Thereafter, such copied musical performances are electronically transferred to a master tape recording containing other musical performances. At all times the highest fidelity and quality sound reproduction is assured by attention to the electronic process and the use of the finest electronic equipment available operated by skilled and experienced personnel. This master magnetic tape containing said musical performances is then played through an intricate electronic process for the purpose of duplicating or copying said musical performances embodied on the master recording to magnetic tape which is then wound and spliced onto eight-track stereo tape cartridges, which are in turn packaged in distinctive trade dress as the product of the defendants, with labels prominently displaying trademarks and trade names owned by the defendants.

APPENDIX B

Respondent's Motion for Summary Judgment.

MOTION FOR SUMMARY JUDGMENT

To Toole & Toole, Bryant, Fanning & Yarborough, Levine Goodman & Murchison and Richards & Schefte, Attorneys for the Defendants:

You Will Hereby Take Notice, That ten (10) days from date, or at such other time as it may be heard, the plaintiff, through its attorneys, will move for a Summary Judgment upon the ground there is no genuine issue as to any material fact dealing with liability, and the plaintiff is entitled to a judgment as a matter of law.

This motion will be based upon affidavits and pleadings previously filed with this Court and upon the opinion of the South Carolina Supreme Court in the case of *Columbia Broadcasting System, Inc. v. Custom Recording, Inc., et al.,* filed May 29, 1972.

/s/ DORCEY LYBRAND,
LYBRAND, RICH, CAIN & SIMONS,

/s/ JAMES E. AUSTIN,

/s/ JULIUS W. McKAY,
McCAY, SHERRILL, WALKER, TOWNSEND & WILKINS.

July 5, 1972.

APPENDIX C

Section 2 of the Copyright Act 17 U. S. C. § (1970).

§ 2. Rights of author or proprietor of unpublished work.

Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor. (July 30, 1947, ch. 391, 61 Stat. 654.)

Public Law 92-140
92nd Congress, S. 646
October 15, 1971

An Act

To amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 17 of the United States Code is amended in the following respects:

Sound recordings. Copyright. Limitations. 61 Stat. 652; 66 Stat. 752.

(a) In section 1, title 17, of the United States Code, add a subsection (f) to read:

"To reproduce and distribute to the public by sale or other transfer of ownership, or by rental, lease, or lending, reproductions of the copyrighted work if it be a sound recording: *Provided*, That the exclusive right of the owner of a copyright in a sound recording to reproduce it is limited to the right to duplicate the sound recording in a tangible form that directly or indirectly recaptures the actual sounds fixed in the recording: *Provided further*, That this right does not extend to the making or duplication of another sound recording that is an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording; or to reproductions made by transmitting organizations exclusively for their own use."

(b) In section 5, title 17, of the United States Code, add a subsection (n) to read:

"Sound recordings."

Copyright notice, form. 68 Stat. 1032.

(c) In section 19, title 17, of the United States Code, add the following at the end of the section: "In the case of reproductions of works specified in subsection (n) of section 5 of this title, the notice shall consist of the symbol ℗ (the letter P in a circle), the year of first publication of the sound recording, and the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner: *Provided*, That if the producer of the sound recording is named on the labels or containers of the reproduction, and if no other name appears in conjunction with the notice, his name shall be considered a part of the notice."

Notice, location.

(d) In section 20, title 17, of the United States Code, amend the first sentence to read: "The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music, or if a sound recording on the surface of reproductions thereof or on the label or container in such manner and location as to give reasonable notice of the claim of copyright."

Definitions.

(e) In section 26, title 17, of the United States Code, add the following at the end of the section: "For the purposes of this section and sections 10, 11, 13, 14, 21, 101, 106, 109, 209, 215, but not for any other purpose, a reproduction of a work described in subsection 5(n) shall be considered to be a copy thereof. 'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture. 'Reproductions of sound recordings' are material objects in which sounds other than those accompanying a motion picture are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, and include the 'parts

Supra.

of instruments serving to reproduce mechanically the musical work, 'mechanical reproductions', and 'interchangeable parts, such as discs or tapes for use in mechanical music-producing machines' referred to in sections 1(e) and 101(e) of this title."

61 Stat. 652.
17 USC 1.
Infra.

SEC. 2. That title 17 of the United States Code is further amended in the following respect:

Copyrighted music, unauthorized use.

In section 101, title 17 of the United States Code, delete subsection (e) in its entirety and substitute the following:

61 Stat. 661.

"(e) INTERCHANGEABLE PARTS FOR USE IN MECHANICAL MUSIC-PRODUCING MACHINES.—Interchangeable parts, such as discs or tapes for use in mechanical music-producing machines adapted to reproduce copyrighted musical works, shall be considered copies of the copyrighted musical works which they serve to reproduce mechanically for the purposes of this section 101 and sections 106 and 109 of this title, and the unauthorized manufacture, use, or sale of such interchangeable parts shall constitute an infringement of the copyrighted work rendering the infringer liable in accordance with all provisions of this title dealing with infringements of copyright and, in a case of willful infringement for profit, to criminal prosecution pursuant to section 104 of this title. Whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice."

Notice.

Effective dates.

SEC. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act and before January 1, 1975, and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

Approved October 15, 1971.